

ENVIRONMENTAL ADVOCATES
ATTORNEYS AT LAW

5135 ANZA STREET
SAN FRANCISCO, CA 94121
(415) 533-3375

Fax: (415) 358-5695

E-mails: csproul@enviroadvocates.com, heather@enviroadvocates.com,
mcoyne@enviroadvocates.com

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Submitted via FOIA Online (<https://foiaonline.regulations.gov>)

National Freedom of Information Officer
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (2822T)
Washington, DC 20460

Re: Request Under Freedom of Information Act (Fee Waiver/Limitation Requested)

Dear Freedom of Information Officer:

Ecological Rights Foundation (“EcoRights”), via their public interest counsel at Environmental Advocates, requests all documents constituting, memorializing, explaining or commenting upon the following:

- (1) All documents since January 20, 2017 related to Administrator Pruitt’s living arrangements in Washington, D.C. This shall include documents constituting and related to Administrator Pruitt’s arrangement to live in an apartment for \$50 a night during the beginning of 2017, and all leases, contracts, and any and all emails, documents, or correspondence reflecting the arrangement. This request shall also include any documents memorializing whether McKenna Pruitt, Administrator Pruitt’s daughter, was also living in the apartment, and all documents reflecting Administrator Pruitt’s understanding of his use of the facilities. This request shall also include documents constituting leases, contracts, or any agreements relating to all of the places where Administrator Pruitt has been staying in Washington D.C. from January 2017 to the present. The request shall include all documents related to the ethics investigation of Administrator Pruitt’s living arrangements, including the EPA ethics counsel’s determination that the price was “reasonable market value.” The request shall also include any repudiation of that determination by the ethics counsel and rationale for reopening the investigation, and any documents created or relied upon in the ethics investigation.

- (2) All documents created by or provided to EPA since January 20, 2017 constituting, memorializing, explaining or commenting upon communications between Administrator Pruitt, and/or any official or employee of EPA, and Steven Hart and/or his wife Vicki Hart, including but not limited to communications involving the living arrangement referenced in (1) above.
- (3) All documents created by or provided to EPA since January 20, 2017 constituting, memorializing, explaining or commenting upon Administrator Pruitt's travel costs, including his use of first class airfare. This request shall also include any documents explaining the rationale for Administrator Pruitt's use of first class flights, such as a security clearance memo and/or any other documents related to security measures. This request shall also include any and all communications by Administrator Pruitt expressing a preference, practice, policy, or request to fly first class. This request shall also include all receipts for first class airfare. The request shall also include all itineraries for Administrator Pruitt's travel, including government-related and personal-related matters, and receipts for costs incurred on trips that were paid for by public funds. This request shall also include any and all documents related to the EPA Inspector General's review of Administrator Pruitt's travel.
 - a. For instance, this request shall include all documents related to Administrator Pruitt's trip to Morocco, including all receipts for costs that were paid for by public funds. This request shall also include Mr. Pruitt's itinerary for the trip, including all work related and personal related visits.
- (4) All documents related to hiring decisions by the EPA since January 20, 2017 where Administrator Pruitt was in any way consulted, provided advice, recommended that a certain person should be hired, or in any way influenced the hiring of any political appointee or EPA employee. This shall include all people that Administrator Pruitt has appointed to positions within the agency. This shall include all documents reflecting the qualifications of such appointees and employees. This shall also include any documents constituting, memorializing or commenting upon Administrator Pruitt's rationales for hiring each person, including but not limited to any personal relationship that such new employees or political appointees have with Administrator Pruitt. This request shall include the salary of all such new hires and political appointees.
 - a. For instance, this request shall include Administrator Pruitt's appointment of Albert Kelly to oversee the Superfund program. The request shall include all documents related to Mr. Kelly's qualifications for this position, including Administrator Pruitt's rationale for hiring him. The request shall also include any and all communications commenting upon Mr. Kelly being fined by the Federal Deposit Insurance Corporation.

- (5) All documents related to, constituting, memorializing, explaining or commenting upon raises given to EPA staff since January 20, 2017 where Administrator Pruitt was in any way consulted, provided advice, recommended that a person's salary be raised, reviewed the decision to give such a raise, or any documents reflecting Administrator Pruitt's awareness of such raises. This request shall include any documents memorializing, interpreting, or commenting upon the agency's view of its ability to give employees raises under provisions of the Safe Drinking Water Act, and any and all documents related to employees who have been given raises under the provisions of that Act. Specifically, this request shall include all documents related to the decision to give raises to Sarah Greenwalt and Millan Hupp. This request shall also include any and all communications sent from or to Administrator Pruitt to make him aware of the raises. This request shall also include any and all documents related to the White House's initial rejection of the requested raise amounts. This request shall also include any decision to rescind the raises and the rationale for rescinding the raises.
- (6) All documents related to decisions by Administrator Pruitt, or where the Administrator was consulted, gave advice, or provided recommendations, to demote any EPA employee or political appointee since January 20, 2017. The term demote shall include reassigning any person to a job with lesser responsibilities, lesser pay, lesser say in spending decisions, lesser interaction with Administrator Pruitt, or placing any person on administrative leave, or any other act that results in a person's reduction of pay, authority, benefits, prestige, or access. This request shall include all documents constituting, memorializing, or describing any rationale related to any such decision to demote an employee or appointee. In particular, this request shall include any documents memorializing a decision to demote any person after such employee or appointee speaks up about Administrator Pruitt's expenditures, security needs, ethics, conflicts of interest, or otherwise questioning the actions of the Administrator.
- a. For example, this request shall include all documents related to the demotions of Kevin Chmielewski, Reginald E. Allen, Eric Weese, John E. Reeder, and John C. Martin. This shall include all documents related to the rationale for demoting these people, and all documents related to concerns raised by these people related to how the agency was being run under Administrator Pruitt.

As you should be aware, EcoRights sent EPA a FOIA request on February 1, 2017, requesting documents related to Gag Orders and Political Review Orders promulgated by the agency since the inauguration of President Trump (EPA-HQ-2017-003479). EPA failed to make a final determination within the statutory deadline or to release any documents related to this request. EcoRights felt compelled to file a federal lawsuit against EPA to address EPA's failure to comply with FOIA, which is currently pending in the Northern District of California (case no. 18-cv-394). We trust that EPA will reach a determination on this request within FOIA's 20 working day deadline set

forth at 5 U.S.C. § 552(a)(6)(A)(ii) and will limit its withholding to those documents that EPA can meet its burden to show are truly exempt from disclosure and the release of which would cause foreseeable harm.

For purposes of this request “documents” means “all written, typewritten, drawn or printed material or record of any type or description and all information kept or recorded on magnetic or electronic media, including, without limitation, correspondence, letters, agreements, contracts, memoranda of agreement or understanding, electronic mail (including both messages sent and received from government personnel), telegrams, inter- and intra-office communications, forms, reports, studies, working papers, handwritten or other notes, phone records, logs, diaries, minutes, spreadsheets, computation sheets, data sheets, transcripts, drawings, sketches, plans, leases, invoices, index cards, checks, check registers, maps, charts, graphs, bulletins, circulars, pamphlets, notices, summaries, books, photographs, sound recordings, videotapes, rules, photocopied or computer-related materials, and every other means of recording upon any tangible thing, any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations of them, and all forms of written or recorded matter to which [the government has] access or of which [the government has] any knowledge”).

FOIA requires that an agency disclose documents to any person except where the document falls under a specifically enumerated exemption. 5 U.S.C. § 552 (2002). “[T]hese limited exemptions do not obscure the basic policy that disclosure, not secrecy, is the dominant objective of the Act”; “[c]onsistent with the Act’s goal of broad disclosure, these exemptions have been consistently given a narrow compass.” *Dep’t of Interior v. Klamath Water Users Protective Ass’n*, 532 U.S. 1, 7-8 (U.S. 2001) (internal citations omitted). The courts have emphasized the narrow scope of these exemptions and “the strong policy of the FOIA that the public is entitled to know what its government is doing and why.” *Coastal States Gas Corp. v. Dep’t of Energy*, 617 F.2d 854, 868 (D.C. Cir. 1980). Further, under the recent amendments, 5 U.S.C § 552(a)(8)(A) now provides that (1) an agency shall withhold information only if the agency reasonably foresees that disclosure would harm an interest protected by an exemption described in subsection (b) or disclosure is prohibited by law; (2) the agency shall consider whether partial disclosure of information is possible whenever the agency determines that a full disclosure of a requested record is not possible; and (3) the agency shall take reasonable steps necessary to segregate and release nonexempt information.

Thus, the government has a duty in preparing responses to EcoRights’ FOIA request not to withhold documents unless foreseeable harm exists, to consider partial disclosure, and to take reasonable steps to segregate nonexempt information. Exemptions are read narrowly and the government bears the burden of proving exemptions apply. 5 U.S.C. § 552(a)(4)(b); see *Milner v. Dep’t of the Navy*, 562 U.S. 562, 563 (U.S. 2011). Agencies “should not withhold information simply because [they] may do so legally. . . . For every request, for every record reviewed, agencies should be asking ‘Can this be released?’ rather than asking ‘How can this be withheld?’” See also *Mobil Oil Corp. v.*

U.S. E.P.A., 879 F.2d 698, 700 (9th Cir. 1989) (“The exemptions are permissive, and an agency may voluntarily release information that it would be permitted to withhold under the FOIA exemptions.”)

We request that the government provide electronic copies of its response to this request – as well as any responsive documents that may be transmitted via e-mail – to me at the following e-mail addresses:

Christopher Sproul: csproul@enviroadvocates.com
Heather Kryczka: heather@enviroadvocates.com
Molly Coyne: mcoyne@enviroadvocates.com

Please send any documents that must be sent via regular mail to the following address:

Christopher Sproul
Environmental Advocates
5135 Anza St.
San Francisco, California, 94121

Your staff may contact me at (630) 544-9977 or heather@enviroadvocates.com to further discuss your response to this request. Thank you for your prompt attention to this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Heather Kryczka'.

Heather Kryczka
Counsel for Ecological Rights Foundation

Attachment 1
Fee Waiver Request

Attachment to Freedom of Information Act (FOIA) Request Letter: Fee Waiver Request

Pursuant to 40 C.F.R. section 2.120(d), the U.S. Environmental Protection Agency (EPA) applies a six factor test in determining whether to grant a fee waiver for FOIA requests. Ecological Rights Foundation (“EcoRights”) addresses each of these six factors below. As demonstrated below, EcoRights should be granted a fee waiver.

1. The subject matter of the requested records must specifically concern identifiable operations or activities of the government. A request for access to records for their informational content alone does not satisfy this factor.

EcoRights’ Response: EcoRights’ FOIA request seeks several specific categories of documents relating to the policies and practices of the Environmental Protection Agency (EPA) since the inauguration of President Trump on January 20, 2017, particularly related to the EPA Administrator Scott Pruitt’s conflicts of interests, rewarding of people with whom he has personal relationships, use of taxpayer funds, and demoting employees who question his actions. First, EcoRights seeks documents related to Administrator Scott Pruitt’s living arrangements, including his arrangement to rent an apartment for \$50 a night from the wife of a lobbyist representing a number of companies with business before the EPA. EcoRights accordingly requests documents reflecting any communications between EPA and the lobbyist and his wife, to help understand whether the arrangement has resulted in political access or benefits for the companies represented by the lobbyist. Second, EcoRights requests documents related to Administrator Pruitt’s spending of taxpayer funds on travel, including the amount of funds spent on first class air fare and expenses charged while traveling. Third, EcoRights requests all documents related to staff that have been hired by Administrator Pruitt or on his recommendation, including their qualifications, salaries, and any personal relationships with the Administrator, to shed light on who is being entrusted to administer and enforce the nation’s environmental laws and whether they are qualified to fulfill their roles. Fourth, EcoRights requests all documents related to raises given to staff where the Administrator has had any role in recommending or reviewing those raises, and specifically requests documents related to raises given to Millan Hupp and Sarah Greenwalt. Fifth, EcoRights requests documents related to Administrator Pruitt’s demotions of EPA employees, including the decisions to demote Kevin Chmielewski, Reginald E. Allen, Eric Weese, John E. Reeder, and John C. Martin. Accordingly, EcoRights’ request meets this criterion.

2. For the disclosure to be likely to contribute to an understanding of specific government operations or activities, the releasable material must be meaningfully informative in relation to the subject matter of the request.

EcoRights’ Response: The documents EcoRights request constitute the best available evidence of Administrator Pruitt’s conflicts of interest in accepting living arrangements for less than the market value. The documents will also show whether the living

arrangements have resulted in special access to the EPA, influence in decision-making, and/or favorable treatment for Steven Hart, his wife, and/or the companies that he represents. These documents also constitute the best available evidence of how the Administrator and the agency are spending taxpayer funding on the Administrator's travel, and whether they are spending taxpayer funding for any illegitimate or frivolous purpose. The requested documents also constitute the best evidence of the employees and personnel that the Administrator is hiring under the Trump Administration, their qualifications to be entrusted to administer and enforce the nation's environmental laws, and will reveal to what extent the Administrator's personal relationships or personal interests are influencing the agency's hiring decisions. The requested documents also constitute the best available evidence of whether Administrator Pruitt is displaying favoritism toward certain EPA employees by rewarding them with raises, whether the agency is skirting government protocols to secure such raises, and whether the Administrator is rewarding people he has personal relationships with, and thereby misusing public funds and/or contributing to a toxic culture at the agency that hinders the ability of EPA employees to conduct their duties. The documents also constitute the best evidence of Administrator Pruitt's rationale for demoting certain employees who have questioned the way he is running the agency, to show whether the demotions have sent a chilling effect to EPA employees that could prevent them from raising ethical issues within the agency. Overall the documents requested are expected shed light on ethical issues surrounding the Administrator and the agency.

3. The disclosure must contribute to the understanding of the public at large, as opposed to the understanding of the requester or a narrow segment of interested persons. One's status as a representative of the news media alone is not enough.

EcoRights' Response: Disclosure of the documents will promote the understanding of the general public in a significant way because EcoRights will analyze the information and make its conclusions known to our members, other environmental groups nationwide, and the public at large via press releases and by posting our analyses of the information on one or more internet web sites or citizen group email broadcast "systems," such as the Clean Water Action Network. There has been significant environmental group and media focus on the ethical issues surrounding Administrator Pruitt's living arrangements where he paid under market value for use of an apartment in 2017, an arrangement which is tied to a lobbyist with important interests in the agency's decisionmaking. Similarly, there has been significant media attention on Administrator Pruitt's use of public funds for lavish travel arrangements, including first class flights, and his rewarding of his friends with jobs and increased compensation. These documents will help the public to understand how Administrator Pruitt is allocating agency resources and spending taxpayer money. These documents will also help the public understand who is being hired to run the agency in a time when many staff are leaving the agency, and how those new employees may be shaping the direction of the agency and the ability of the agency to fulfill its statutory mandates. The public has a strong interest in finding out how Administrator Pruitt's personal relationships are affecting agency decision-making and the enforcement of environmental laws as part of an overall approach of modifying environmental laws

and programs to create a more favorable business climate for certain business sectors. The documents requested will allow EcoRights to provide meaningful “hard” data to the environmental community and the media on these topics.

4. The disclosure must contribute “significantly” to public understanding of government operations or activities.

EcoRights’ Response: Disclosure of the requested information will significantly contribute to public understanding of government operations. Specifically, the information will demonstrate whether EPA is spending exorbitant resources on Administrator Pruitt’s personal expenses, resources which should instead be going to programs that fulfill EPA’s statutory mandates. Similarly, the documents will reveal whether EPA is circumventing usual procedures in order to put in place significant raises for certain EPA employees, and how much funding is being allocated in this way. By bringing to light the agency’s expenditures of public resources, the public will secure the information necessary to hold the agency accountable for its use of taxpayer money, and the ability to demand EPA to refocus its priorities on its congressionally mandated duties.

In addition, disclosure of the documents will reveal some of Administrator Pruitt’s personal relationships with lobbyists. Revealing the favors provided to Administrator Pruitt by someone connected with lobbyists for the oil industry will provide transparency that allows the public understand whether the agency’s decisionmaking in regard to certain programs, projects, and companies has been influenced by Administrator Pruitt’s personal interests. This will enhance the ability of the public to hold the agency accountable to fulfilling its mission and expose any corruption.

The documents will also help the public to understand how Administrator Pruitt is treating his staff, which staff are being treated with favoritism, which staff are being demoted, and how such treatment could contribute to a culture that chills EPA employees from working at the agency or performing their functions. This will further enhance public understanding of the ability of EPA employees to execute their duties and to assess the capacity of the EPA as an agency overall to fulfill its obligations to enforce and implement federal environmental laws.

Finally, disclosure of the documents will bring to light the people that have been chosen to fill positions within the agency since the inauguration of President Trump. These documents will reveal these employees’ qualifications and backgrounds, shedding light on whether the employees and political appointees running the agency are in fact qualified to fulfill their duties under the law. This will help the public to understand how the agency is shifting its priorities under the direction of Administrator Pruitt. It will also help the public to identify whether Administrator Pruitt is awarding positions within the agency to people with whom he has personal relationships, rather than based upon merit. Bringing these documents to light will help the public understand potential underenforcement of the law by the agency and to identify which programs may be

underperforming due to the supervision of an employee or political appointee who lacks experience.

Threats to our environment such as water and air pollution adversely affect millions of people throughout the United States, and adequate, efficient implementation and enforcement of environmental laws is critical for the public health of millions. EcoRights has a demonstrated ability to disseminate the problematic features of government activities to a wider public audience, by litigation as well as the other means. Factors indicating an ability to disseminate information to the public include publication on an organization's website and the ability to obtain media coverage. *Judicial Watch v. Rossotti*, No. 02-5154, 2003 WL 2003805 (D.C. Cir. May 2, 2003).

EcoRights' analyses will be disseminated via press releases as well as posted on EcoRights' web sites (<http://www.ecorights.org>) and likely the web sites of other environmental groups. EcoRights has a proven track record of obtaining press coverage of the environmental issues it publicizes. Generally, EcoRights obtains press coverage in the local and national media, including newspapers and radio stories. For example, EcoRights' recent filing of an ESA citizen suit concerning Stanford University's operations in the San Francisco Bay Area watershed was covered by several San Francisco Bay Area newspapers, KQED radio, and a local television station. EcoRights regularly issues press releases and includes them on its website. EcoRights has demonstrated its ability to disseminate information to the public, as evidenced by its upkeep of its website and social media, its mention on other environmental groups' websites, and its ability to attract press coverage for its various lawsuits.

5. The extent to which disclosure will serve the requester's commercial interest, if any.

EcoRights' Response: EcoRights is a community-based educational nonprofit corporation committed to the protection, preservation, and restoration of the environment and endangered and threatened species. For over 15 years, EcoRights has been devoted to furthering the rights of all people to a clean, healthful, and biologically diverse environment. To further EcoRights' environmental advocacy goals, EcoRights actively seeks federal and state agency implementation of state and federal water quality and wildlife laws, and as necessary, directly initiates enforcement actions on behalf of itself and its members. Accordingly, EcoRights has no commercial interest in the information requested. EcoRights seeks the information solely to determine the effect of the current EPA's practices related to Administrator Pruitt's ethical obligations and conflicts of interest, new employees hired by the agency, the agency's policy of rewarding certain employees with raises, and how the agency is allocating public funds. This information will therefore aid in EcoRights' efforts to advocate that the appropriate state, federal, or private entities take needed actions to protect our environment and natural resources.

EcoRights has no financial interest in the information sought or any enforcement actions that may result. EcoRights' goal in urging enforcement of environmental laws is not private financial gain, but rather vindication of the larger public interest in ensuring that

the EPA is operating in such a way that it can achieve compliance with environmental laws designed to protect our environment, wildlife, health, and natural resources.

6. The extent to which the identified public interest in the disclosure outweighs the requester's commercial interest.

EcoRights' Response: EcoRights has no commercial interest in the requested information, as discussed above. Accordingly, the identified public interest in the disclosure of the requested information discussed above necessarily outweighs any commercial interest in this request. For the above reasons, EcoRights respectfully requests a fee waiver pursuant to 5 U.S.C. section 552(a)(4)(A)(iii) and 15 C.F.R. § 4.11(k) for all copying costs, mailing costs, and other costs related to locating and tendering the documents.

We also base our request for a fee waiver on the following additional authorities.

The law **requires** that records be furnished without charge or at a reduced charge when requesters are able to demonstrate that (1) disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government, and (2) is not primarily in the commercial interest of the requester. 5 U.S.C. § 552(4)(a)(iii); 40 C.F.R. 2.107(l)(1); *Judicial Watch, Inc. v. Rossotti*, No. 02-5154, 2003 WL 2003805 (D.C. Cir. May 2, 2003) [emphasis added].

(a) **Rule of liberal construction.** FOIA's fee waiver provision is to be liberally construed in favor of noncommercial requesters. *Judicial Watch, Inc. v. Rossotti*, No. 02-5154, 2003 WL 2003805 (D.C. Cir. May 2, 2003); *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th Cir. 1987). The major purpose of the 1986 amendments was to remove roadblocks and technicalities that agencies have used to deny fee waivers. *McClellan*, 835 F.2d at 1284. A request for fee waiver need only be reasonably specific and nonconclusory. *Judicial Watch, Inc. v. Rossotti*, No. 02-5154, 2003 WL 2003805 (D.C. Cir. May 2, 2003).

Requesters make a prima facie case for a fee waiver when they specify why they want the administrative record, what they intend to do with the information, and to whom they will distribute the information. *Friends of the Coast Fork v. U.S. Dept. of Interior*, 110 F.3d 53, 55 (9th Cir. 1997). The burden then shifts to the agency to establish that the denial is warranted. *Id.* In denying a fee waiver request, the agency may not "hang [its] hat on a single factor" but must assess all of the pertinent factors. *Id.* Moreover, a reviewing court owes no particular deference to an agency's restrictive interpretation of FOIA. *See Tax Analysts v. Commissioner*, 117 F.3d 607, 613 (D.C. Cir. 1997).

(b) **Public interest purpose.** EcoRights falls squarely within the category of "public interest" requesters intended to benefit from the 1986 amendments of FOIA, which expanded FOIA fee waiver provisions. This amendment was intended precisely to

facilitate informational access by citizen watchdog groups that will monitor and challenge government activities. *See Better Govt. Ass'n v. Department of State*, 780 F.2d 86, 88-89 (D.C. Cir. 1986). Indeed, this provision should be construed as a presumption that such requesters are entitled to a fee waiver, especially if the requesters will publish the information or otherwise make it available to the general public. *See Ettlinger v. Fed. Bureau of Investigation*, 596 F.Supp. 867, 873 (D. Mass. 1984).

The legislative history of the fee waiver provision indicates that “A requester is likely to contribute significantly to public understanding if the information is new; supports public oversight of agency operations; or otherwise confirms or clarifies data on past or present operations of the government.” 132 Cong. Rec. H94646 (Reps. English and Kindness). Courts have cited this legislative intent as a standard for determining that a requester qualifies for a fee waiver. *See McClellen*, 835 F.2d at 1284-86.

For the above reasons, EcoRights respectfully requests pursuant to 5 U.S.C. section 552(a)(4)(A)(iii) and 40 C.F.R. section 2.120(d) a fee waiver for all copying costs, mailing costs, and other costs related to locating and tendering the documents.